

State of South Carolina  
Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S. C. 29201

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CHARLESTON OFFICE

Public Notice No. DHEC-NWP-2006

Public Notice Date: February 27, 2006

NOTICE OF PROPOSED DECISION

401 Water Quality Certification  
Coastal Zone Management Program Certification

The South Carolina Department of Health and Environmental Control (SCDHEC), proposes to take action for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, and for certification of consistency with the S.C. Coastal Zone Management Program in accordance with 15 CFR 930, for reissuance, with modification of 19 of the 44 existing U.S. Army Corps of Engineers' Nationwide Permits (NWP).

SCDHEC is proposing to modify the 401 Water Quality Certification and certification of consistency with the S.C. Coastal Zone Management Program of the nationwide permits (33 CFR 330). SCDHEC Staff determined that provided the proposed actions listed in the following table are implemented and proposed conditions are adhered to, there is a reasonable assurance that work authorized by the herein will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act and the Coastal Zone Management Program in accordance with 15 CFR 930. The Office of Ocean and Coastal Resource Management must issue its own permit for any activity covered by the nationwide permits in the critical areas of South Carolina's Coastal Zone. Individuals applying for Nationwide Permits should be so advised. This does not preclude compliance with 15 CFR 930 for direct federal activities.

Accordingly, the SCDHEC proposes to act on the Nationwide permits as listed in the attached table. In reference to proposed Coastal Zone Management Program consistency certifications, "Issue with Conditions" means that the Nationwide Permit can be made consistent with the Coastal Zone Management Program if the proposed regional conditions are adopted by the U.S. Army Corps of Engineers.

The SCDHEC published notice of this proposal in the State Register on July 22, 2005. The evaluation of the proposed work was conducted by the Bureau of Water and the Office of Ocean and Coastal Resource Management and a copy of the staff assessment supporting the proposed decision is enclosed.

The final 401 Water Quality Certification and Coastal Zone Consistency Certification will be issued if a request for an adjudicatory hearing is not granted by the Administrative Law Court (ALC).

The issuance of this Notice of Proposed Decision represents a final staff decision that may be appealed to the ALC. An appeal of this decision based on water quality or water use impacts must be made pursuant to the amended Rules of Procedure for the Administrative Law Court that became effective on May 1, 2005. Pursuant to Rule 11 of the amended ALC Rules of Procedure, such appeal must be made by filing a request for a contested case hearing with the Clerk of the Administrative Law Court (803-734-0550) at the following address within 30 days after notice of this decision:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC has a Notice of Request for Contested Case Hearing form that may be used, but is not required. The form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>.

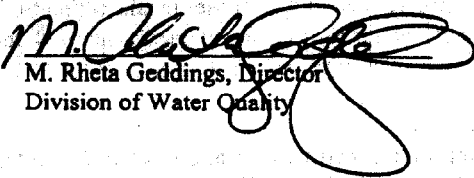
Pursuant to Rule 11(D), the following elements must, at a minimum, be included within the request:  
A request for a contested case hearing must contain the following information pursuant to ALC Rule 11:

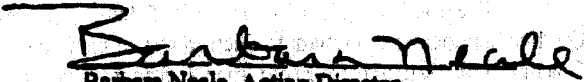
1. The name of the party requesting the hearing and the issue(s) for which the hearing is requested;
2. The caption or other information sufficient to identify the decision, order, letter, determination, action, or inaction which is subject to the hearing;
3. A copy of the written agency decision, order, letter or determination, if any, which gave rise to the request;
4. The relief requested.

hearing must submit a filing fee in the amount of \$250 with the Administrative Law Court.

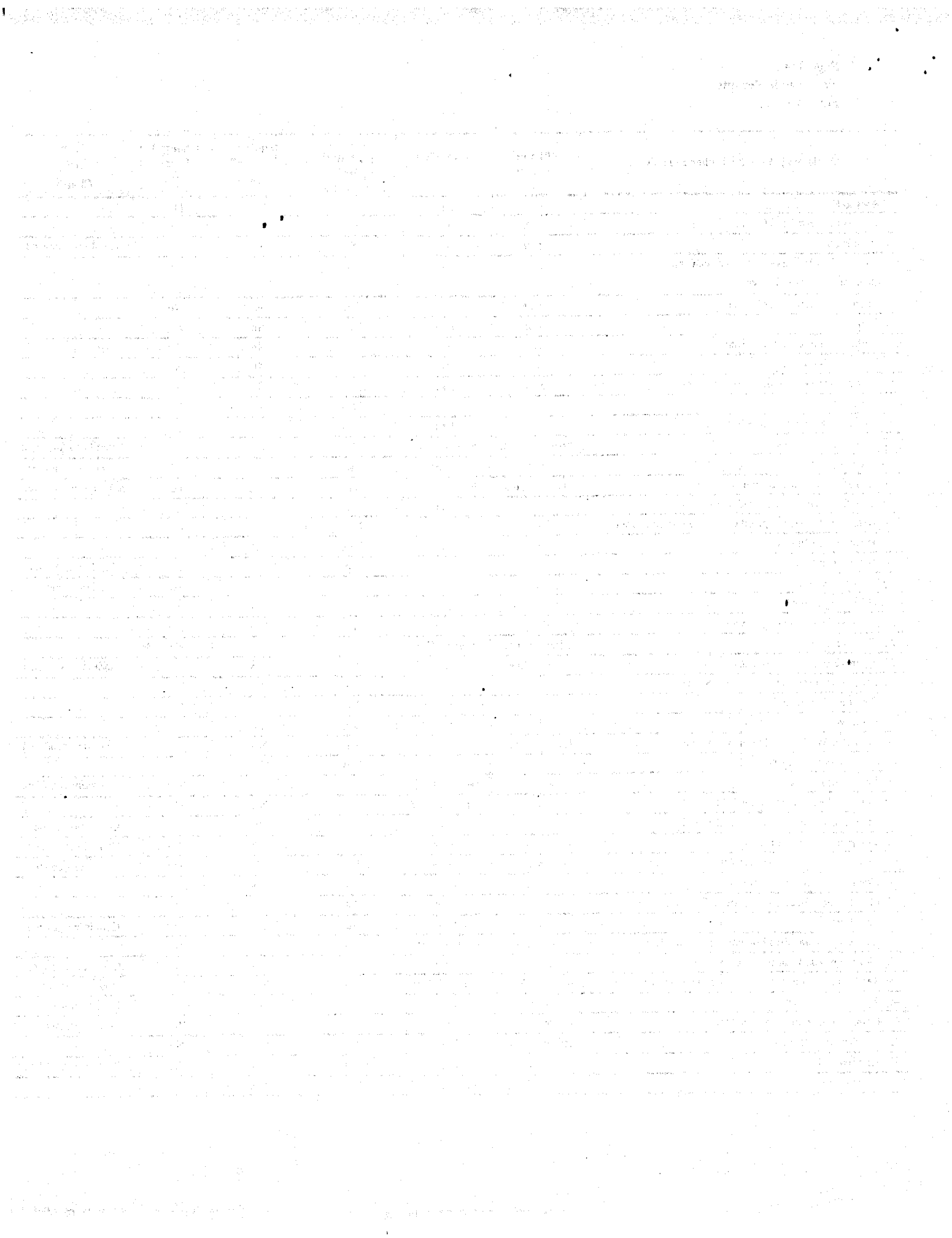
Finally, a copy of a request for the contested case hearing must also be served on each party, including but not limited to DHEC. Copies of a request for a contested case hearing should be mailed to the Clerk of the Board, DHEC, 2600 Bull Street, Columbia, SC 29201, (803) 898-3300. Additional information on the adjudicatory hearing may be obtained by contacting the Legal Office, Department of Health and Environmental Control, 2600 Bull St, Columbia, SC 29201 or by calling 803-898-3350.

The above information is provided as a courtesy; parties before the Administrative Law Court are responsible for complying with all applicable requirements of the Court.

  
M. Rheta Geddings, Director  
Division of Water Quality

  
Barbara Neale, Acting Director  
Regulatory Programs  
Office of Ocean and Coastal Resource Management

Nationwide Permit Number & Topic	401 Cert Action	CZC Cert Action	Requires 401 NWP Approval (Outside CZ)	Requires CZC NWP Approval	Changed From 2002	Type Of Change
1. Aids to Navigation	N/A	Issue	No	No	No	
2. Structures in Artificial Canals	N/A	Issue	No	No	No	
3. Maintenance	Issue	Issue	No	No	Yes	Conditions deleted
4. Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities	Issue	Issue	No	No	No	
5. Scientific Measurement Devices	Issue	Issue	No	No	No	
6. Survey Activities	Issue	Issue	No	No	No	
7. Outfall Structures & Maintenance	Issue	Issue	No	No	Yes	Conditions deleted
8. Oil & Gas Structures	N/A	Issue	N/A	No	No	
9. Structures in Fleeting & Anchorage Areas	N/A	Issue	N/A	No	No	
10. Mooring Buoys	N/A	Issue	N/A	No	No	
11. Temporary Recreational Structures	N/A	Issue	N/A	No	No	
12. Utility Line Activities	Issue w/ Cond	Issue w/ Cond	Yes	Yes	Yes	Conditions modified
13. Bank Stabilization	Issue	Issue	No	No	Yes	Conditions deleted
14. Linear Transportation Projects	Issue w/ Cond	Issue w/ Cond	Yes	Yes	Yes	Conditions modified
15. U.S. Coast Guard Approved Bridges	Issue	Issue	No	No	No	
16. Return Water From Upland Contained Disposal Areas	Deny	Deny	N/A	N/A	No	
17. Hydropower Projects	Deny	Deny	N/A	N/A	No	
18. Minor Discharges	Issue	Issue	No	No	Yes	Conditions deleted
19. Minor Dredging	Issue	Issue	No	No	Yes	Conditions deleted
20. Oil Spill Cleanup	Issue w/ Cond	Issue	No	No	No	
21. Surface Coal Mining Activities	Deny	Deny	N/A	N/A	No	
22. Removal of Vessels	Issue w/ Cond	Issue w/ Cond	No	No	No	
23. Approved Categorical Exclusions	Issue w/ Cond	Deny	No	N/A	Yes	Conditions modified
24. State Administered Section 404 Programs	N/A	Deny	N/A	N/A	No	
25. Structural Discharges	Issue	Issue	No	No	No	
26. [Reserved]	N/A	N/A	N/A	N/A	No	
27. Stream & Wetland Restoration Activities	Issue w/ Cond	Issue	Yes	No	Yes	Conditions modified
28. Modifications of Existing Marinas	N/A	Deny	N/A	N/A	No	
29. Single-family Housing	Issue w/ Cond	Issue w/ Cond	Yes	Yes	Yes	Conditions modified
30. Moist Soil Management for Wildlife	Issue w/ Cond	Issue w/ Cond	No	No	No	
31. Maintenance of Existing Flood Control Facilities	Issue	Issue	No	No	Yes	Conditions deleted
32. Completed Enforcement Actions	Issue	Issue	No	No	Yes	Conditions deleted
33. Temporary Construction, Access & Dewatering	Issue	Issue	No	No	Yes	Conditions deleted
34. Cranberry Production Activities	Deny	Deny	N/A	N/A	No	
35. Maintenance Dredging of Existing Basins	N/A	Deny	N/A	N/A	No	
36. Boat Ramps	Issue	Issue	No	No	Yes	Conditions deleted
37. Emergency Watershed Protection & Rehabilitation	Issue w/ Cond	Issue w/ Cond	No	No	No	
38. Cleanup of Hazardous & Toxic Waste	Issue	Issue	No	No	Yes	Conditions deleted
39. Residential, Commercial, & Institutional Developments	Issue w/ Cond	Issue w/ Cond	Yes	Yes	Yes	Conditions modified
40. Agricultural Activities	Issue	Issue	No	No	Yes	Conditions deleted
41. Reshaping Existing Drainage Ditches	Issue	Issue	No	No	Yes	Conditions deleted
42. Recreational Facilities	Issue w/ Cond	Deny	No	N/A	No	
43. Stormwater Management Facilities	Issue w/ Cond	Deny	Yes	N/A	Yes	Conditions modified
44. Mining Activities	Issue w/ Cond	Issue w/ Cond	Yes	Yes	No	



**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
DIVISION OF WATER QUALITY, WATER QUALITY CERTIFICATION SECTION**

**Staff Assessment for  
401 Water Quality Certification and  
Consistency with the S.C. Coastal Zone Management Program**

**BACKGROUND INFORMATION**

The South Carolina Department of Health and Environmental Control (SCDHEC) is proposing to modify the 401 Water Quality Certification (certification) and certification of consistency with the S.C. Coastal Zone Management Program (consistency) of the nationwide permits (33 CFR 330). No changes are proposed to 25 of the current certification and consistency conditions on the nationwide permits, with some with changes to the certification and consistency conditions of 19 of the existing nationwide permits. SCDHEC published notice of this proposal in the State Register on July 22, 2005. This notice explained the requirement for the State to issue certification and consistency for certain nationwide permits. SCDHEC accepted public comments related to the proposed changes to certification and consistency conditions.

Nationwide permits are general permits issued on a nationwide basis to authorize minor activities with little delay or paperwork. General permits are issued for a category of activities when those activities are similar in nature and cause only minimal individual and cumulative environmental impacts or the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another regulatory agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. The U.S. Army Corps of Engineers (Corps) believes that the nationwide permits generally comply with State water quality standards and the S.C. Coastal Zone Management Program. Based on public input and in coordination with the Corps, SCDHEC has evaluated the NWP process in South Carolina to determine what changes could be made in processing, consistency determinations and certification conditions that would eliminate unnecessary duplication and regulatory control and adequately protect State water quality standards and comply with the S.C. Coastal Zone Management Program. All of the notices and subsequent changes have been reflective of this effort.

State Water Quality Certification pursuant to Section 401 of the Clean Water Act, or waiver thereof, is required prior to issuance or reissuance of the nationwide permits which may result in a discharge into waters of the United States. The Corps has determined that the discharges associated with nationwide permits number 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, and 44 should be reviewed by the DHEC in accordance with provision of Section 401 of the Clean Water Act. All of the nationwide permits should be reviewed for consistency with the S.C. Coastal Zone Management Program.

**SUMMARY OF PUBLIC COMMENTS**

**The following submitted written comments:**

Progress Energy, Caroline Choi, Director Environmental Services

South Carolina Department of Natural Resources, Robert E. Duncan, Environmental Programs Director

South Carolina Environmental Law Project, Jimmy Chandler, Jr.

Santee Cooper, Jay Hudson, P.E., Environmental Management

**Westinghouse Savannah River Company, Savannah River Site, D.V. Osteen, Environmental Services Section**

**Duke Power Energy and Environmental Policy Group, Mark E. Hollis, Director, Environmental Policy**

**Beam, Shannon & Associates, H. Wayne Beam, Ph. D., President**

**Ballou Associates, Tom Ballou**

**Nexsen Pruet, W. Thomas Lavender, Jr.**

**CarolinasAGG, Leslie B. Hope**

**South Carolina Chamber of Commerce, Ted Bach, Water Subcommittee Chairman**

**Central Electric Cooperative, Inc., Tommy L. Jackson, Senior Engineering Assistant**

**South Carolina Archives and History Center, Rebekah Dobrasko, Review and Compliance Coordinator**

**Home Builders Association of South Carolina, Julian Barton, Director of Government Affairs**

**All comments received were considered in developing the conditions for the nationwide permits.**

## EXPLANATION, EVALUATION, AND PROPOSED ACTION OF THE NATIONWIDE PERMITS

**General Conditions:** These conditions apply to all of the nationwide permits (NWP) unless otherwise noted. A project proposed for authorization under a nationwide permit should not be considered unless it meets all of the following general conditions plus any special conditions listed for each NWP.

1. DHEC considers a "single and complete project" to mean the overall project proposed or accomplished by a single owner/developer and it includes all land within the project boundary under single ownership. It is not interpreted to mean only the land area directly impacted by each NWP request. Impacts to Geographical Areas of Particular Concern (GAPC) sites or adjacent waterbodies or wetlands resulting from an activity will be considered during the review of these actions.
2. After the fact applications for NWPs will not be certified under NWPs and will require separate approval through DHEC's individual certification process.
3. Activities in Outstanding Resource Waters, Trout Waters (as defined in R. 61-68), springheads or aquatic sites located adjacent to those areas, are not certified.
4. Activities in areas identified by SCDHEC as having impaired uses (as defined by 303(d) of the Clean Water Act) are not certified.
5. The applicant must implement best management practices during construction to minimize erosion and migration of sediments off site. These practices may include use of mulches, hay bales, silt fences, or other devices capable of preventing erosion and migration of sediments. These devices must be maintained in a functioning capacity until the area is permanently stabilized upon project completion. All disturbed land surfaces must be stabilized upon project completion. These devices must be placed at the toe of all fill material in and adjacent to wetlands and adequately reinforced and installed to prevent failure.
6. Upon project completion, all disturbed riverbeds, stream/creek beds and/or wetlands must be restored to their original contours and conditions to the maximum degree practicable. Also, all disturbed upland areas must be permanently stabilized with a vegetative cover (native species). This may include sprigging, trees, shrubs, vines or ground cover. Also, wetlands should be revegetated, if necessary.
7. Only clean earthen material free of all potential sources of pollution must be used as fill and all filled areas must be stabilized with a vegetative cover after construction to minimize erosion.
8. All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.
9. All excess excavated materials must be placed on high land and properly contained and permanently stabilized to prevent erosion (see # 5 above).
10. Excavated material must not be stockpiled in the adjacent wetlands, but placed on barges or on high ground, when possible. If the excavated material is temporarily placed in wetlands, it must be placed at intervals to allow for adequate circulation of water in the adjacent waters, including wetlands.
11. The applicant must comply with any approved County Erosion and Sediment Control and/or Stormwater Ordinances.
12. Any equipment used within the wetland must be equipped with high floatation tires to minimize rutting and compaction, or should be operated from floating barges.
13. Once project construction is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

14. All nationwide permit applications must be accompanied by a Corps surveyed wetland delineation identifying all wetlands (jurisdictional and nonjurisdictional), depressional areas or other special aquatic sites within the project area.

15. For projects requiring fill in wetlands, the applicant must demonstrate that impacts to wetlands have been avoided, unavoidable impacts to wetland areas have been minimized, and provide suitable compensation for any unavoidable wetland impacts. This sequencing should be presented in all permit applications. Additional sequencing regarding appropriate compensation (onsite, within watershed, outside watershed, etc.) must also be demonstrated. Where compensatory mitigation is required, on-site compensatory mitigation, in accordance with the provisions of the S. C. Coastal Zone Management Program in the Coastal Zone, must be pursued if at all possible. Compensatory mitigation must be determined using the Corps Standard Operating Procedure (SOP), where required by the Corps or in a Specific Condition of the 401 or CZC Certification. Compensatory mitigation plans must be included in the application submitted to the Corps by the applicant and in the package copy furnished to SCDHEC by the Corps. Proof of purchase of compensatory mitigation credits or execution of the deed restriction, restrictive covenant, or conservation easement document, if part of the submitted compensatory mitigation plan, must be submitted to both the Corps and SCDHEC prior to commencement of construction OR within 60 days of the permit issued by the Corps. Although the permit may be issued pending resolution of a compensatory mitigation plan, the work authorized by that permit may not commence until the compensatory mitigation plan is approved and finalized, as described above.

16. The Permittee must notify the South Carolina Institute of Archaeology and Anthropology in accordance with South Carolina Underwater Antiquities Act of 1991 (Article 5, Chapter 7, Title 54 Code of Laws of South Carolina, 1976) in the event archaeological or paleontological remains are found during the course of work. Archaeological remains consist of any materials made or altered by man which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or nonrecent (i.e., older than 100 years) vessel ruins. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

17. Permittee must notify the South Carolina Department of Archives and History (Historic Preservation Division, Post Office Box 11669, Columbia, South Carolina 29211) if any archaeological materials are unearthed prior to or during construction. Archaeological materials consists of any items, fifty years or older, which were made or used by man. These items include, but are not limited to stone projectile points (arrowheads), ceramic shards, bricks, worked wood, bone and stone, metal and glass objects, and human skeleton remains. These materials may be present on the ground surface and/or under the surface of the ground.

18. Use of multiple NWP's on one tract or land parcel must be in accordance with 33 CFR Appendix C - General Condition #15. In those instances where a PCN is required to be submitted to the Corps (use of NWP 12 - 40 in combination with another NWP 12 - 40), written or email concurrence must be obtained from DHEC prior to issuance of the multiple NWP's by the Corps.

19. Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC-OCRM. SCDHEC OCRM's action on direct critical area permits will serve as it's consistency determination for the critical area activity.

Rationale for changes: SCDHEC made changes in this area largely in response to public comments for clarification in the language and to enhance regulatory processing.



Nationwide Permit Number 1

Section 10

CZC

**Aids to Navigation.** The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR, chapter I, subchapter C part 66).

**Proposed Action:** No changes proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 2

Section 10

CZC

**Structures in Artificial Canals.** Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)).

**Proposed Action:** No changes are proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 3

Section 10 and Section 404

CZC & 401

**Maintenance.** Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must

commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes. This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21).

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** This NWP is intended to allow for normal maintenance activities and to restore existing facilities to their originally permitted limits. Maintenance, by definition, should not result in substantial change in the configuration or area impacted. If a structure or fill is previously authorized and currently serviceable, there should be minimal adverse impact on water quality or water uses as a result of routine maintenance. The sections of the NWP which allow modification of existing facilities would allow these facilities to be expanded or increased in size without going through the full permitting process. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 56 NWP #7 with a total impact of 6.06 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 4

Section 10 & Section 404

CZC & 401

**Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.** Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster

digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks.

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 5

Section 10 & Section 404

CZC & 401

**Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition.

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 6

Section 10 & Section 404

CZC & 401

**Survey Activities.** Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the CWA.

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 7

Section 10 & Section 404

CZC & 401

**Outfall Structures and Maintenance.** Activities related to:

(i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) Maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

- a. The permittee notifies the District Engineer in accordance with General Condition 13;
- b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);
- c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and
- d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized

outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program (Policy XILE.1 and Guidelines for Evaluation of All Projects C.3.I)

**Rationale:** Even though the placement or construction of these structures have the potential to adversely affect some water uses, including aquatic life passage or secondary recreational uses, the Department will have the opportunity to review these impacts through review of applications for Construction in Navigable Waters Permitting Program for construction of the outfall structures.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 11 NWP #7 with a total impact of 1.993 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 8

Section 10

CZC

**Oil and Gas Structures.** Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service(MMS). Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334: nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

**Proposed Action:** No changes proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 9

Section 10

CZC

**Structures in Fleeting and Anchorage Areas.** Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose.

**Proposed Action:** No changes proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 10

Section 10

CZC

**Mooring Buoys.** Non-commercial, single-boat, mooring buoys.

**Proposed Action:** No changes proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 11

Section 10

CZC

**Temporary Recreational Structures.** Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually.

**Proposed Action:** No changes proposed: Find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 12

Section 404

CZC & 401

**Utility Line Activities.** Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) **Utility lines:** The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily side cast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6 inches to 12 inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) **Utility line substations:** The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/4-acre of non-tidal waters of the US.

(iii) **Foundations for overhead utility line towers, poles, and anchors:** The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) **Access roads:** The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than 1/4-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) through (iv) may not exceed a total of 1/2-acre

loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). **Notification:** The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;
- (e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10-acre of waters of the US; or
- (f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet.
- (g) Permanent access roads constructed in waters of the US with impervious materials.

**Note 1:** Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

**Note 2:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

**Note 3:** Where the proposed utility line is constructed or installed in navigable waters of the US (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy IX. A. 1(a), (c), (d) & (e): Policy IX.E.1(c) & (d): Policy VII.A.1).

**Rationale:** In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this nationwide permit allows utility lines to be constructed linearly through wetland systems for extended distances and to have multiple crossings of the same aquatic site system. Additionally, the widths of rights-of-way cleared during line installation are often excessive and result in considerably more impacts than necessary. Even in these cases, construction impacts could be temporary; however, vegetation is often routinely cleared within the easement, thereby resulting in permanent impacts. Minimization of the cleared area and the area permanently maintained would minimize the permanent impacts to wetland functions.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 176 NWPs with a total impact of 22,965 acres have been issued for this NWP. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

**Proposed Conditions of the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the discharge of dredged or fill material impacts greater than 0.10-acre or 500 linear feet. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 500 linear feet.
2. Utility lines must cross perpendicular (to the extent practicable) to the aquatic site area.
3. If the project involves more than 10 aquatic site crossings (not including directionally bored crossings), the project will not be certified under this NWP and will require separate approval through SCDHEC's individual certification process. Impacts to aquatic sites associated with the construction of temporary, permanent, and maintenance easements must be limited to a total width of 50' (including filling, excavation, and clearing), except where required for safety reasons. For certification under this NWP, the maximum amount of area per project allowed to be permanently filled (not including the area backfilled for pipe placement) is 0.1-acre or 500 linear feet, including pump station and access road, if required.
6. Access to the project site must be attained from highland when practicable. When this is not practicable, access must be attained by floating barges, low-ground pressure vehicles/equipment, mats, or similar means, instead of barge canals or causeways.
7. All excavated material must be side cast away from streams and other open channels. If the excavated material is temporarily placed in wetlands, it must be placed at intervals to allow for the adequate circulation in the adjacent waters, including wetlands. All excess excavated materials that are hauled off site or placed on high land must be properly contained and permanently stabilized to prevent erosion.
8. The installation of power poles will be certified under this NWP.
9. All intake structures must be screened to prevent entrainment of juvenile and larval organisms and the inflow velocity must be limited to <0.5 ft/sec.
10. Upon completion of construction activities, all disturbed areas must be restored to their original contours and must be permanently stabilized with a vegetative cover (native species). This may include planting trees, shrubs, vines or ground cover.

**Regional Conditions of the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification, plus the following condition, are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

1. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence. If allowed, the applicant must provide a Wetland Master Plan consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. The plan must include an identification of all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

Nationwide Permit Number 13

Section 10 & Section 404

CZC & 401

**Bank Stabilization.** Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed more than the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program. (Policy XII. E.1.)

**Rationale:** Although these activities may cause temporary increases in turbidity, there should be no permanent impacts to water quality or water uses and in fact, these activities should improve water quality over time by removing eroding areas. There would be no loss of wetland functions due to Corps criterion d. Direct DHEC-OCRM permits are required within the critical area. Outside of the critical area, S.C. Construction in Navigable Waters Permits are required. Additionally, Preamble Condition 3 of this staff assessment will limit application of this nationwide permit to one per "single and complete project." In order to meet the Corps criterion b for processing under this NWP the activity shall be less than 500 feet in length or shall otherwise be reviewed as an individual permit by the Corps and SCDHEC.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 only 38 NWPs with a total impact of 1,238 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 14

Section 10 & Section 404

CZC & 401

**Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:



a. This NWP is subject to the following acreage limits:

- (1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US;
- (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

- (1) The discharge causes the loss of greater than 0.10-acre of waters of the US; or
- (2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit.

**Note:** Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy II. B.1(a), (b) and (f), Policy VII.A.1)

**Rationale:** The criteria for use of this nationwide permit reduces potential impacts on water quality, water uses, and wetland functions. However, inclusion of several conditions will insure impacts are minimal. All culverts should be placed to allow aquatic life passage. Restoration of affected aquatic sites or stream bed at either side of the crossing would further minimize impacts. The nationwide permit as currently proposed, provides no limit on the number of road crossings, nor does it allow for a comprehensive review of all aquatic site impacts on a project when impacts other than wetland crossings occur.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 104 NWP #14 with a total impact of 11,235 acres have been issued for this NWP. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and therefore proposes to maintain the following conditions. Any discrepancies between Corps criteria and SCDHEC conditions will be resolved through a new processing approach where SCDHEC will review of all NWP 14 applications for compliance with certification conditions. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

**Proposed Conditions of the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the discharge of dredged or fill material impacts greater than 0.10-acre or 300 linear feet. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.
2. Impacts certified under this NWP must be limited to minor road crossings only.
3. Linear transportation projects must cross perpendicular (to the extent practicable) to the aquatic site area. Impacts certified under this NWP must be limited to two crossings per single and complete project (as defined in the General Conditions) and must be in non-tidal wetlands only.
4. Impacts certified under this NWP may not exceed ¼-acre of special aquatic sites, including wetlands, or 300 linear feet of stream.
5. All crossings must be culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, to maintain flows through the floodplain during flow events exceeding bank full, and to prevent the restriction of low flows and the movement of aquatic organisms. All culverts must be adequately sized, designed, installed and maintained to prevent erosion and to provide adequate passage for aquatic life and anadromous fishes occurring naturally in the vicinity of the culvert.
6. For all new private roads or widening projects of existing private roads, the top width will be limited to a maximum of 16'.
7. Access to the project site must be attained from high ground, from the portion of the bridge already completed ("end on end" construction) or from floating barges or mats (instead of canals or causeways).
8. Projects accessing large tracts under single ownership must include a description of all the related project impacts that may result from the road construction and submit a master plan. The plan must include an identification of all water resource impacts/activities, drainage patterns, conceptual development plans, and a compensatory mitigation plan.

**Proposed Regional Conditions for the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification, plus the following conditions, are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

1. Activities in the critical areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC-OCRM. SCDHEC-OCRM's action on direct critical area permits will serve as its consistency determination for the critical area activity.
2. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence. If allowed, the applicant must provide a Wetland Master Plan consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. The plan must include an identification of all wetland impacts/activities, drainage patterns, conceptual development, and a compensatory mitigation plan.

Nationwide Permit Number 15

Section 404

CZC & 401

**U.S. Coast Guard Approved Bridges.** Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit.

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 16

Section 404

CZC & 401

**Return Water From Upland Contained Disposal Areas.** Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures.

**Proposed Action:** No changes proposed: Deny 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program. (Policies VIII. A. 1) and B. 1))

Nationwide Permit Number 17

Section 404

CZC & 401

**Hydropower Projects.** Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the "Notification" General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition.

**Proposed Action:** No changes proposed: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Policy XI and XII.E.1)

Nationwide Permit Number 18

Section 10 & Section 404

CZC & 401

**Minor Discharges.** Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

- a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- b. The discharge, including any excavated area, will not cause the loss of more than 0.10-acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;
- c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and
- d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** Although these minor discharges have the potential to adversely affect some water uses, including aquatic life passage or secondary recreational uses, the inclusion of the following conditions will insure the impacts are minimal and the activities have no adverse impacts on water quality or water uses, including wetlands functions. In order to meet the Corps criterion b for processing under this NWP the activity shall not cause more than 0.10 acre of impact to special aquatic sites, including wetlands, or shall otherwise be reviewed

as an individual permit by the Corps and SCDHEC.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 6 NWPs with a total impact of 0.205 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 19

Section 10 & Section 404

CZC & 401

**Minor Dredging.** Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** Best Management Practices are included in the Corps and SCDHEC General Conditions applicable to all NWPs. The Corps also limits minor dredging activity to areas that sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)).

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 2 NWPs with a total impact of 0.01 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 20

Section 10 & Section 404

CZC & 401

**Oil Spill Cleanup.** Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action.

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification with conditions and find consistent with the S.C. Coastal Zone Management Program.

**Proposed Condition for the 401 Water Quality Certification:**

1. DHEC's Emergency Response Team must be contacted immediately in the case of a spill.

Nationwide Permit Number 21

Section 10 & Section 404

CZC & 401

**Surface Coal Mining Activities.** Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

**Mitigation:** In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404.

**Proposed Action:** No changes proposed: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Nationwide Permit Number 22

Section 10 & Section 404

CZC & 401

**Removal of Vessels.** Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3).

**Proposed Action:** No changes proposed: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy XII. E.1.)

**Conditions of the 401 Water Quality Certification:**

1. Removal of vessels from areas of known or suspected sediment contamination is prohibited.
2. Upon removal of the vessel, all disturbed areas must be restored to their original contours and conditions to the maximum degree practicable. Also, all disturbed areas must be permanently stabilized with a vegetative cover (native species), if necessary. This may include planting trees, shrubs, vines or ground cover.

**Regional Conditions of the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 23

Section 10 & Section 404

CZC & 401

**Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy XII. E.1.)

**Rationale:** According to NEPA, these actions have been determined to have no significant effect on the environment. However, these activities may take place in special aquatic sites, such as wetlands, and could result in the adverse impact to water quality or elimination of water uses, including wetlands functions. If these activities proposed to take place in special aquatic sites are reviewed separately, impacts resulting from this nationwide permit should be minimal. Due to the nature of determining if an activity can become a categorical exclusion, the SCDHEC will have the opportunity to review any new categorical exclusions.

**Proposed Conditions for the 401 Water Quality Certification:**

1. This nationwide permit is not applicable for impacts in special aquatic sites, including wetlands and streams.

Nationwide Permit Number 24

Section 10

CZC

**State Administered Section 404 Program.** Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

**Proposed Action:** No proposed changes: Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Nationwide Permit Number 25

Section 404

CZC & 401

**Structural Discharge.** Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US.

**Proposed Action:** No proposed changes: Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 26

Reserved (no proposed changes)

Nationwide Permit Number 27

Section 10 & Section 404

CZC & 401

**Stream and Wetland Restoration Activities.** Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

*(a) The activity is conducted on:*

- (1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or
- (2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or
- (3) Any other public, private or tribal lands;

*(b) Notification:* For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and (c) Planting of only native species should occur on the site. Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities. This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water

impoundments.

**Reversion.** For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date.

**Note:** Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** Activities conducted under the authority of this nationwide permit have the potential to improve water quality, water uses, and wetland functions provided reimpounding of aquatic sites is prohibited. Conditions regarding the review of proposed activities and the management plans will insure impacts to water quality and water uses are minimal. The permit is consistent with the S.C. Coastal Zone Management Program.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Any discrepancies between Corps criteria and SCDHEC conditions will be resolved through a new processing approach where SCDHEC will review of all NWP 27 applications for compliance with certification conditions.

**Proposed Conditions for the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the project impacts greater than 0.10-acre or 50 linear feet a restoration plan must be submitted and approved by the SCDHEC.
2. Reimpoundment of previously impounded aquatic sites is not certified under this NWP and will require separate approval through SCDHEC's individual certification process.
3. A complete restoration plan indicating the size and location of the areas to be restored, construction activities involved in the restoration program, planting and monitoring plans and description of actions expected to occur from the restoration must be included.



4. When the NWP application includes a mitigation bank proposal, certification of the NWP will be contingent upon the final approval of a Mitigation Banking Instrument by the Mitigation Banking Review Team and the final signatures of the appropriate agency personnel.

Nationwide Permit Number 28

Section 10

CZC

**Modifications of Existing Marinas.** Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the US is authorized by this NWP.

**Proposed Action:** No proposed changes. Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Nationwide Permit Number 29

Section 10 & Section 404

CZC & 401

**Single Family Housing.** Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than 1/4-acre of non-tidal waters of the US, including non-tidal wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition;
- c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;
- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of 1/4-acre for the entire subdivision;
- e. An individual may use this NWP only for a single-family home for a personal residence;
- f. This NWP may be used only once per parcel;
- g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership."

**Proposed Action:** Implement proposed changes and issue 401 Water Quality Certification with conditions and find inconsistent with S.C. Coastal Zone Management Program. (Policy I.(1)(b) and Policy XII. E.(1))

**Rationale:** The criteria for use of this nationwide permit minimizes the impact on water quality, water uses, and wetland functions, however it still has the potential to result in adverse impacts. If the proposed conditions are approved, they will insure that there are no adverse effects from the proposed activity. The nationwide permit is inconsistent with the S.C. Coastal Zone Management Program because it would allow alteration of wetlands without regard to the type of wetland, location or consideration of feasible alternatives.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit

applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Any discrepancies between Corps criteria and SCDHEC conditions will be resolved through a new processing approach where SCDHEC will review of all NWP 29 applications for compliance with certification conditions. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

**Proposed Conditions for the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the discharge of dredged or fill material impacts greater than 0.10-acre or 300 linear feet. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.
2. The nationwide permit is not certified and will require separate approval through SCDHEC's individual certification process if the project proposes the discharge of dredged or fill material in open water areas.
3. The impounding of water and creating of lakes or ponds is not certified by this nationwide permit.

**Proposed Regional Conditions of the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification, plus the following conditions, are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

1. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence. If allowed, the applicant must provide a Wetland Master Plan consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. The plan must include an identification of all wetland impacts/activities, drainage patterns, conceptual development, and a compensatory mitigation plan.

**Nationwide Permit Number 30**

**Section 404**

**CZC & 401**

**Moist Soil Management for Wildlife.** Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies.

**Proposed Action:** No proposed changes: Issue 401 Water Quality Certification with conditions and find inconsistent with the S. C. Coastal Zone Management Program. (Policy XII.E.1, Policy VII.C.1).

**Conditions of the 401 Water Quality Certification:**

1. All alterations must take place on the dikes or water control structures, etc., or within an existing functional impoundment or the activity must be undertaken to construct firebreaks for wildfire control and management.
2. All disturbed areas (including retopped embankments, areas adjacent to new water control structures, etc.) must be permanently stabilized with an appropriate vegetative cover (native species) upon project completion.

**Regional Conditions of the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 31

Section 10 & Section 404

CZC & 401

**Maintenance of Existing Flood Control Facilities.** Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

(i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)).

**Notification:** After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

**Maintenance Baseline:** The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

**Mitigation:** The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above

has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

**Emergency Situations:** In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** If a flood control project is located in an area of known or suspected sediment contamination, these potential activities can result in the release of contaminants. Provided this nationwide permit prohibits activities in these areas, no adverse impacts to water quality are anticipated.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 one NWP with an undetermined impact have been issued under this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 32

Section 10 & Section 404

CZC & 401

**Completed Enforcement Actions.** Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(I) The terms of a final written Corps non-judicial settlement agreement resolving a violation of section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the CWA, provided that:

- a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;
- b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
- c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under section 404 of the CWA and/or section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the

National Contingency Plan at 40 CFR subpart G) under section 311 of the Clean Water Act (CWA), section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), section 312 of the National Marine Sanctuaries Act (NMSA), section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. 191j, to the extent that a Corps permit is required. For either (i), (ii) or (iii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** According to the preamble of the Federal Register notice, this nationwide permit is applicable to enforcement actions by EPA and the Corps only. EPA and Corps must ensure that State Water Quality Standards are maintained through appropriate coordination with SCDHEC and are required do so on enforcement actions that may have an adverse effect on water quality within State waters. The preamble to the regulation indicates that the DE can require an individual permit if the impacts are more than minimal and the applicant has not proposed compensatory mitigation to minimize the impacts. Restoration or compensatory mitigation is addressed in the General Conditions applicable to all NWPs and therefore this NWP can be found consistent with the S.C. Coastal Zone Management Program.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 1 NWP with a total impact of 0.28 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 33

Section 10 & Section 404

CZC & 401

**Temporary Construction, Access and Dewatering.** Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters

of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program (Policies II. B. 1 and XII. E. 1)

**Rationale:** Best Management Practices are included in the Corps and SCDHEC General Conditions applicable to all NWP. Due to the restoration requirements of this permit, the impacts to water quality, water uses, or wetland functions should be temporary.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 2 NWPs with a total impact of 0.344 acres have been issued for this NWP. SCDHEC believes that these impacts be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 34

Section 404

CZC & 401

**Cranberry Production Activities.** Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;
- b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,
- c. The activity does not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

**Proposed Action:** No proposed changes: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Nationwide Permit Number 35

Section 10

CZC

**Maintenance Dredging of Existing Basins.** Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/ egress, whichever is less, provided the dredged material is disposed of at an upland site

and proper siltation controls are used.

**Proposed Action:** No proposed changes: Find inconsistent with the S.C. Coastal Zone Management Program. (Policies VIII.A.1(a),(b) & (c)).

Nationwide Permit Number 36

Section 10 & Section 404

CZC & 401

**Boat Ramps.** Activities required for the construction of boat ramps provided:

- a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- c. The base material is crushed stone, gravel or other suitable material;
- d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,
- e. No material is placed in special aquatic sites, including wetlands. Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the U.S.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program. (Policy Vi.B.).

**Rationale:** Corps Criterion e. prohibits placement of fill in wetlands and insures that this nationwide permit will not adversely affect wetland functions. In general, construction impacts of boat ramp installation to water quality and water uses are minimal and temporary.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 2 NWPs with a total impact of 0.027 acres have been issued for this NWP. SCDHEC believes that these impacts be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

Nationwide Permit Number 37

Section 10 & Section 404

CZC & 401

**Emergency Watershed Protection and Rehabilitation.** Work done by or funded by:

- a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or
- b. The USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or
- c. The DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)).

**Proposed Action:** No proposed changes: Issue 401 Water Quality Certification with conditions and find inconsistent with the S. C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy XII.E.1)

**Proposed Conditions for the 401 Water Quality Certification:**

1. Within 30 days of initiation of the activity, the permittee must submit a restoration/mitigation plan and schedule for all impacts to special aquatic sites, including wetlands.

**Proposed Regional Conditions for the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

**Nationwide Permit Number 38**

**Section 10 & Section 404**

**CZC & 401**

**Cleanup of Hazardous and Toxic Waste.** Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under section 404 of the CWA or section 10 of the Rivers and Harbors Act.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program (policy IX. B.).

**Rationale:** These cleanup activities should be allowed to proceed in a timely manner and requirement of a Army Corps of Engineers permit and individual water quality certification could unduly delay the process with potential threats to water quality, water uses, and wetland functions. The preamble to the regulation indicates that the DE can require an individual permit if the impacts are more than minimal and the applicant has not proposed compensatory mitigation to minimize the impacts. Restoration or compensatory mitigation is addressed in the General Conditions applicable to all NWPs and therefore this NWP can be found consistent with the S.C. Coastal Zone Management Program.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 3 NWP #38 with a total impact of 0.172 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)



**Residential, Commercial, and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

- a. The discharge does not cause the loss of greater than  $\frac{1}{2}$ -acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:
  - (1) The discharge causes the loss of greater than 0.10-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or
  - (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or
  - (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;
- d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- e. The discharge is part of a single and complete project;
- f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;
- g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 0.10-acre requires that the permittee notify the District Engineer in accordance with General Condition 13;
- h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);
- i. For discharges causing the loss of 0.10-acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., 0.12-acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., 0.12-acre of emergent wetlands created on-site);
- j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the

maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site. Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (I) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the US (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2-acre, see General Condition 15).

**Subdivisions:** For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with development of individual subdivision lots. **Note:** Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy VII.A.1, Policy VII.C.1, Policy XII.E.1 and others depending upon the activity.)

**Rationale:** The criteria for use of this nationwide permit attempts to minimize impacts on water quality, water uses, and wetland functions, however many of the activities have the potential to result in adverse impacts. These activities should be reviewed on an individual basis to insure that aquatic site impacts are avoided, minimized, and unavoidable impacts are adequately compensated for with appropriate and practicable mitigation. Adherence to the proposed conditions will insure that there are no adverse effects from the proposed activities. Outside the critical area, S. C. Coastal Zone Management Program policies require that wetland impacts be addressed in a manner consistent with the program refinements (Wetland Master Planning Policies). This nationwide permit is inconsistent with the S.C. Coastal Zone Management Program because it would allow alteration of wetlands without regard to the type of wetland, location or consideration of feasible alternatives.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Any discrepancies between Corps criteria and SCDHEC conditions will be resolved through a new processing approach where SCDHEC will review of all NWP 39 applications for compliance with certification conditions. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

**Proposed Conditions for the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the discharge of dredged or fill material impacts greater than 0.10-acre or 50 linear feet. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 50 linear feet.

2. Projects accessing large tracts under single ownership must include a description of all the related project impacts that may result from the road construction and submit a master plan. The plan must include an identification of all water resource impacts/activities, drainage patterns, conceptual development plans, and a compensation plan, if required in the above conditions.
3. Stream channelization or use of the permit in perennial streams is not certified under this NWP and will require separate approval through SCDHEC's individual certification process.
4. Sedimentation/sediment ponds in special aquatic sites, including wetlands, are not certified under this NWP.
5. SCDHEC considers a "single and complete project" to mean the overall project proposed or accomplished by a single owner/developer and it includes all land within the project boundary under single ownership/control. It is not interpreted to mean only the land area directly impacted by each NWP request. Impacts to GAPC sites or adjacent waterbodies or wetlands resulting from an activity will be considered during the review of these actions.

**Proposed Regional Conditions of the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 40

Section 404

CZC & 401

**Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

- (1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.);
- (2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;
- (3) The permittee must have NRCS-certified wetland delineation;
- (4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and
- (5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/2-acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g., 1/2-acre of emergent wetland on a farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

- (1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2-acre of non-tidal wetlands on a farm tract;
- (2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than 0.10-acre of non-tidal wetlands;
- (3) The notification must include a delineation of affected wetlands; and
- (4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the

permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer in accordance with the "Notification" General Condition 13; and

e. The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the 1/2-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of 1/2-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed 1/2-acre (see General Condition 15).

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** According to the criteria for use of this permit, the building must be directly related to ongoing farming activities in the farmed wetlands and necessary for farming activities. Authorization of this permit in South Carolina should have minimal impact. According to the Natural Resources Conservation Service (NRCS), there are very few farmed wetlands in the state. Consequently, issuance of the 401 Water Quality Certification and consistency with the S.C. Coastal Zone Management Program for this nationwide permit should not result in adverse impacts to water quality or contravene State water quality standards. The preamble to the regulation indicates that the DE can require an individual permit if the impacts are more than minimal and the applicant has not proposed compensatory mitigation to minimize the impacts. Restoration or compensatory mitigation is addressed in the General Conditions applicable to all NWPs and therefore this NWP can be found consistent with the S.C. Coastal Zone Management Program.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project.

**Proposed Conditions of the 401 Water Quality Certification:**  
(none)

**Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

**Nationwide Permit Number 41**

**Section 404**

**CZC & 401**

**Reshaping Existing Drainage Ditches.** Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

**Notification:** The permittee must notify the District Engineer in accordance with General Condition 13 if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In general, this NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are generally not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification without conditions and find consistent with the S.C. Coastal Zone Management Program.

**Rationale:** Based on the criteria for use of this NWP, any impact to water quality, water uses, and/or wetland functions should be temporary provided the applicant adheres to the stated NWP criteria.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Corps data on NWPs shows us that between 2002 and 2004 22 NWPs with no impacts have been issued for this NWP. SCDHEC believes that these impacts be categorized as minimal as intended for the nationwide permitting program.

**Proposed Conditions for the 401 Water Quality Certification:**  
(none)

**Proposed Regional Conditions of the Coastal Zone Consistency Certification:**  
(none)

**Nationwide Permit Number 42**

**Section 404**

**CZC & 401**

**Recreational Facilities.** Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

- a. The discharge does not cause the loss of greater than 1/4-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. The permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;
- d. For discharges causing the loss of greater than 0.10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;
- e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- f. The discharge is part of a single and complete project; and
- g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP.

**Proposed Action:** No proposed changes: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy V.A.1(d), Policy V.B.1(a) & (b)).

**Proposed Conditions for the 401 Water Quality Certification:**

1. This NWP must be limited to nature trails/horse trails, bike paths, and small bridges or walkways. These activities must be a maximum of 8' wide and involve hand clearing only. Golf courses, ski areas, buildings, and campgrounds are not approved.
2. Impacts authorized under this NWP may not exceed 1/4-acre of special aquatic sites, including wetlands, or 100 linear feet of stream.
3. A Wetland Master Plan for the recreational area must be submitted for review along with the request for impact. The Wetland Master Plan must include an identification of wetland impacts/activities, drainage patterns, conceptual development plans and a mitigation plan.

Nationwide Permit Number 43

Section 404

CZC & 401

**Stormwater Management Facilities.** Discharges of dredged or fill material into non-tidal waters of the US, excluding

non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/ facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

- a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. For discharges causing the loss of greater than 300 linear feet of intermittent stream beds, the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;
- d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;
- e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 0.10-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In addition, the notification must include:
  - (1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;
  - (2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and
  - (3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);
- f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);
- g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;
- h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and
- i. The discharge is part of a single and complete project.

**Proposed Action:** Implement proposed changes and Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy XII.E.1, Policy XIII.A).

**Rationale:** The criteria for use of this nationwide permit attempts to minimize impacts on water quality, water uses, and wetland functions, however the activities have the potential to result in adverse impacts. These

activities should be reviewed on an individual basis to insure that aquatic site impacts are avoided, minimized, and unavoidable impacts are adequately compensated for with appropriate and practicable mitigation. Adherence to the proposed conditions will insure that there are no adverse effects from the proposed activities. This NWP is not consistent with the policies regarding Wetland Master Planning, Stormwater Management and the protection of salt, brackish and fresh water wetlands.

The proposed changes would enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and Individual Permit applications. These changes will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. Any discrepancies between Corps criteria and SCDHEC conditions will be resolved through a new processing approach where SCDHEC will review of all NWP 43 applications for compliance with certification conditions. The nationwide permit could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed 401 water quality certification conditions are applied to the NWPs.

**Proposed Conditions for the 401 Water Quality Certification:**

1. The Corps will provide SCDHEC notification by copy furnishing us with the initial NWP number and application package information. This will include all the information provided to the Corps in accordance with the Corps General Condition #13, if the discharge of dredged or fill material impacts greater than 0.10-acre or 50 linear feet. A compensatory mitigation plan must be submitted and approved by SCDHEC for projects with impacts exceeding 0.10-acre or 50 linear feet.
2. Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures.
3. Impacts for the repair, maintenance, or conversion of existing ponds for use as quantity or volume control can be permitted under this NWP.

**Proposed Regional Conditions for the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

Nationwide Permit Number 44

Section 404

CZC & 401

**Mining Activities. Discharges of dredged or fill material into:**

- (I) Isolated waters; streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;
- (ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/ or
- (iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:
  - a. The mined area within waters of the US, plus the acreage loss of waters of the US resulting from support activities, cannot exceed ½-acre;
  - b. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved);
  - c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter



the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the US;

f. The permittee must use measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a CWA section 402 permit may be required;

i. All activities authorized must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the US within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the US for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the 1/2-acre limit is not exceeded; and

l. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the US adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/ mineral mining can occur in waters of the US within 100 feet of the ordinary high water mark of headwater streams. The terms "headwaters" and "isolated waters" are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud."

**Proposed Action:** No proposed changes: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Policy III.C.1, Policy VII.A.1, Policy XII.E.1, Policy XIII.E)

**Rationale:** In order to qualify for the nationwide permit, the activity should truly have minimal impacts and the inclusion of several conditions should provide that the impacts are minimal in size and limited to specific activities necessary for small mining operations. This permit is not consistent with the S. C. Coastal Zone Management Program policies regarding the protection of salt, brackish and fresh water wetlands, Stormwater Management and Dredging. If the following conditions are adopted by the Corps as regional conditions, this nationwide permit can be found consistent with the S.C. Coastal Zone Management Program.

**Proposed Conditions for the 401 Water Quality Certification:**

1. For fills in special aquatic sites, including wetlands, greater than 0.5-acres or 300 linear feet of stream,

certification is not granted.

2. A applicant may relocate up to 300 linear feet of a stream provided the channel profile and sinuosity of the relocated stream approximates the original profile.

3. This certification approval does not authorize the alteration of headwater wetlands, as defined by the Corps of Engineers in Nationwide Permit 44.

4. For impacts in ephemeral waters, within the jurisdiction of the Corps of Engineers, over 0.5-acre or 300 linear feet, certification is not granted.

5. The applicant may be required to mitigate for impacts with on-site mitigation, if such mitigation is practical.

6. Sedimentation/sediment basins in special aquatic sites, including wetlands, are not allowed under this NWP unless they are constructed in areas authorized to be impacted by mining.

**Proposed Regional Conditions for the Coastal Zone Consistency Certification:**

Provided all the conditions of the 401 Water Quality Certification are included as Regional Conditions, the nationwide permit will be consistent with the S.C. Coastal Zone Management Program.

Prepared by:

John H. Galt Jr.

Date: 2/27/06

CRPS

Date: 27 Feb 06

Reviewed and Approved by:

M. Mike Galt

Date: February 27, 2006

Barbara Osada Acting Director  
OCRM Regulatory Division

Date: 2/27/06